

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15830 of Neal Goldfarb and Claudia Shur, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure that will extend the existing nonconforming side yard [Paragraph 2001.3(c), and variance from the side yard requirements (Subsection 405.9)] for a two-story addition to an existing nonconforming single-family dwelling in an R-1-B District at premises 3408 Oliver Street, N.W. (Square 1997, Lot 22).

HEARING DATE: June 16, 1993
DECISION DATE: July 7, 1993

ORDER

The property which is the subject of this application is known as 3408 Oliver Street, N.W. It is located on the south side of the street between Nevada Avenue and Broad Branch Road N.W. The site is located in an R-1-B District.

The lot is rectangular in shape and improved with a two-story plus basement detached single-family dwelling. A 15-foot wide alley abuts the site on the east side and at the rear.

The R-1-B District permits matter of right development of single-family detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. The minimum required side yard width is eight feet, and the minimum rear yard depth is 25 feet.

The subject lot contains 5,300 square feet in lot area and it is 40 feet wide. It has a lot occupancy of 932.31 square feet, a rear yard measuring 56.17 feet and a 6.4-foot side yard on the west side of the site. There is no side yard on the east side of the lot which abuts the alley on the east property line.

The applicants are proposing to construct a two-story plus basement addition at the rear of the dwelling. It will extend 20.33 feet to the rear and it will be 22.33 feet wide. The applicants propose to place the addition along the east property line, therefore no side yard will be provided. The applicants are requesting a side yard variance of eight feet and a variance to extend the existing nonconforming structure.

ISSUES AND ARGUMENTS:

The issues and arguments raised in the application are as follows:

1. Whether the property is unique or subject to an exceptional situation or condition?

The applicants, through their architect, maintain that their property is unique. The architect testified that the applicants' kitchen is very small and needs to be enlarged.

The architect testified that the property is unique because the east side of the structure is located on the east property line along the alley. There is no side yard to the east of the property. He stated that the house was built in 1924 and it is the only one in the area with this condition.

The Office of Planning (OP) submitted a report into the record and recommended approval of the application. The Sanborn map submitted with the OP report demonstrates that the other lots in the area have side yards on both sides of the structures.

In its report, OP made note of the location of the house on the lot line.

2. Whether the applicants face a practical difficulty as a result of a unique condition of the property?

The architect testified that the applicants' kitchen is located at the rear of the property on the south-east side of the structure at the property line. He stated that the kitchen is small and needs to be expanded. However, the applicants cannot add on to the east side of the structure because there is no side yard. The applicants can only add on to the rear. If the addition is placed at the rear, the Zoning Regulations would require the addition to be set back eight feet from the side property line.

The architect noted that the existing kitchen extends 12 feet westward from the east lot line, thus two-thirds of the kitchen area is located within eight feet of the lot line. Therefore, the only reasonable location for the addition to the kitchen would be along the eastern lot line. To set the addition back eight feet would create a jog in the middle of the addition. Also, to meet the side yard requirement would interfere with the current circulation patterns of the house and would require the applicants to make undesirable structural changes to their living room. Therefore, the applicants believe that the location of the house on the property line creates a practical difficulty for them in constructing an addition to their property.

The Office of Planning stated that the applicant is proposing to construct a two-story addition at the rear of the existing dwelling to accommodate a breakfast room and a family room on the first floor, and an enlarged master bedroom, study and bathroom on the second floor. The proposed addition is designed to improve the layout of the existing structure and to provide convenience to the occupants. However, both the existing structure and the site are nonconforming in an R-1-B zone district. Therefore, no addition to the dwelling can be made without zoning relief. The existing lot has a width of 40 feet, whereas a minimum lot width of 50 feet is required. In addition, the structure has only a 6.4-foot wide side yard to the west and no side yard to the east. The Zoning Regulations require a minimum width of eight feet for a side yard.

OP stated that the existing dwelling was constructed approximately in 1924, prior to the enactment of the current Zoning Regulations in 1958. OP believes that the applicants face a practical difficulty in making any addition to the structure because of the deficiency in the shape and size of the lot and the location of the structure on the lot which does not provide a side yard to the east.

The resident of 3412 Oliver Street, N.W. testified as a neighbor in opposition to the application. She stated that there is no practical difficulty with regard to the subject property. The opposing neighbor, through her counsel, argued that the addition goes beyond merely expanding the kitchen and there is no practical difficulty associated with expanding the other areas of the house. Those areas do not have insurmountable structural barriers or design issues.

The opposing neighbor further argued that because the applicants have matter of right options, there really is no practical difficulty.

3. Whether the addition will create adverse impacts?

The opposing neighbor testified that her house is immediately adjacent to the applicants' house on the west side. She stated that the houses nearby are on a hill and her house sits lower than the applicants' house. She stated that now she can see the sun, the trees, grass and open space. She can also see the public school across Broad Branch Road to the east. However, with the addition she will only see bricks, vinyl siding and windows. She testified that the proposed addition is very big. It is to be 22 feet wide and 24 feet long. She noted that she has a window on the east side of her house next to the applicants' property. This window is unobscured. The new addition will block the view from this window. Because of the addition she will lose light causing

the house to be darker. She stated that her house is already dark in some areas like the living room on the north side that is covered by a porch.

The opposing neighbor testified that with the addition she will suffer a loss of privacy and the value of her house will decrease. She stated that the houses on both sides of her house are larger than hers by about one-third. Adding the addition will worsen her situation in terms of sunlight, views, privacy and property value. She stated that although she has a window to the south (at the rear) she does not get much light back there because of trees, etc.

In the opposing neighbor's view, the size and height of the addition will adversely impact her enjoyment of her property.

The applicants' architect testified that the bulk of the addition is 20 feet long. Only a portion of the covered porch along the east property line extends an additional four feet beyond the main addition. The applicants' architect stated that he purposely used a shed dormer, which is a very low-slope-pitch roof, to keep the profile as low as possible. He also located the addition as far away as possible from the opposing witness' property. He stated that these decisions were made to minimize the impact on the opposing neighbor. He pointed out that the matter of right solution would be to place the addition eight feet closer to the neighbor's house. He stated that the proposed addition provides 24 feet of open space between her house and the addition. Furthermore, she will still have access to the rear of her property. The architect testified that the space provided is adequate and reasonable. Therefore, the proposed addition will not be of substantial detriment to the public good.

The Office of Planning expressed the view that the proposed addition would not have adverse impacts on the surrounding area by obstructing light and air.

By report dated June 2, 1993, Advisory Neighborhood Commission (ANC) 3F stated that it voted to support the application. The ANC noted that the applicant submitted a petition signed by some neighbors having no objection to the variance. Included among these neighbors were two whose properties abut that of the applicant (although both are separated by an alley from the applicant). The ANC noted that letters from neighbors and a petition opposing the variance were also submitted. Strong opposition was expressed by the next door neighbor who complained of the potential loss of air and light to her home, as well as the view towards Lafayette School.

To explain its support for the application, ANC 3F stated that in making its decision, the Commission considered the alternative plan for a two-story addition which could be built as a matter of right. In the ANC's opinion, this plan would impact the abutting neighbor more negatively than the plan with the variance. Therefore, the proposed plan was found to be the least undesirable of the options.

4. Whether allowing the proposed addition would impair the intent, purpose and integrity of the zone plan?

The applicant's architect testified that the zone plan will not be impaired by the proposal. He stated that with the addition, the applicants' structure will not extend any further south than the houses on the west side of the opposing neighbor. Therefore, the applicants' house will be consistent with the neighborhood.

The architect testified that even with the addition, the property will come well within the other criteria for the R-1-B District. The lot occupancy is only 28 percent, not 40 percent, the rear yard is 56 feet rather than 25 feet, and the height and bulk limitations are met. The variance relief is only needed because of the unique condition of the side yard.

The Office of Planning noted that the application meets the zoning requirements of the R-1-B District regarding lot area and lot occupancy. OP stated that if the application is approved, the intent, purpose, and integrity of the Zoning Regulations would not be impaired because the structure would continue to be used as a single-family detached dwelling.

Counsel for the opposing witness argued that the purpose of the Zoning Regulations for the R-1-B District is to provide for a certain amount of living space and division among people by controlling the density. He stated that the applicants propose a very dense project for an area that is already dense. To support this argument, he stated that if the rear yard were 25 feet instead of 56 feet, the lot occupancy would be 47 percent. In addition, the applicants' large house is located less than 13 feet from the opposing neighbor's house. Therefore, he maintains that the proposed construction would impair the zone plan for the R-1-B District.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The property was built in 1924 and it was located on the east property line along the alley.

2. The lack of a side yard to the east is a unique condition for the subject property.

3. The applicants are unable to make any additions to the property without zoning relief.

4. The location of the kitchen along the east property line at the rear of the house makes it difficult for the applicants to design an addition that expands that area and complies with the side yard requirement.

5. To deny the variance relief would require the applicants to provide a side yard, thus bringing the addition closer to the opposing neighbors property.

6. The impact on the opposing neighbor's property would be relatively minor with the addition as proposed.

7. With the proposed addition, the subject structure will not extend any farther to the rear than other structures in the area.

8. With the addition, the structure will meet all other provisions of the Zoning Regulations.

CONCLUSION OF LAW & OPINION:

Based on the evidence of record the Board concludes that the applicant is seeking an area variance to construct an addition to a single-family detached dwelling located in a R-1-B District. Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met this burden of proof. The Board is of the opinion that the applicants face a practical difficulty as a result of the location of the structure on the property line.

The Board is of the opinion that granting the area variance will not be of substantial detriment to the public good, nor will it substantially impair the intent, purpose and integrity of the zone plan for the R-1-B District.

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The Board concludes that it has accorded the views of ANC 3F the "great weight" to which they are entitled.

In light of the foregoing, it is hereby ORDERED that the application is GRANTED.

VOTE: 3-0 (Maybelle Taylor Bennett, Paula L. Jewell and Angel F. Clarens to grant; Carrie L. Thornhill and Sheri M. Pruitt not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

SEP 30 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15930Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15830

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 30 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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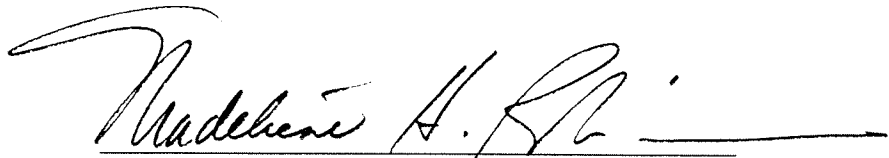
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15830


MADELIENE H. ROBINSON
Director

DATE: SEP 30 1994

15830Att/bhs